

financing sums of money shall be committed by a firm loan agreement acceptable to S&W or placed in an escrow account maintained by an independent, third party trustee who shall agree in writing with S&W to pay S&W from such escrow account, on a monthly basis, for S&W's work in accordance with the terms and conditions of the Key Contract between Company and S&W;

(b) State and Company have agreed in writing upon the means to measure and determine State use of capacity and average State use of capacity in accordance with Section 3.3(i);

(c) no alternative project which does not materially conform to the proposed Network has been required pursuant to Section 4.2(d);

(d) State has approved the Plans and Specifications or has not disapproved the same within the time provided in Section 5.4(c); (as the same may be extended by State pursuant to Section 5.4(c)).

(e) Company and S&W have submitted to State the proposed Construction Segment plan for Phase 1 in accordance with Section 5.8(c) and the proposed sequencing schedule for such Construction Segments in accordance with Section 10.6, and State has approved such Construction Segment plan and sequencing schedule;

(f) Company and S&W have obtained all Permits necessary to construct such Construction Segment;

(g) Company and S&W have submitted to State the proposed Performance Standards for the Network in accordance with Section 7.2, Company has submitted to State the proposed O,A&M Plan for Phase 1 in accordance with Section 7.3, and State has approved the Performance Standards and the O,A&M Plan;

(h) Company has submitted to State the contracting plan described in Section 9.1(a) and State has approved such plan;

(i) Company, S&W and State have agreed upon a schedule of liquidated damages for failure to timely complete the TMC and ITS work described in Section 3.3(e), Company and State have agreed upon a schedule of liquidated damages for failure to satisfy Performance Standards, and Company, S&W and State have executed a modification of this Agreement setting forth such schedules, in accordance with Sections 3.3(e)(ii) and 7.2;

(j) Company and S&W have submitted to State the Key Contract between Company and S&W and all other Key Contracts relating to Phase 1 in accordance with Sections 9.1(a) and (b) (except for Key Contracts which are construction and equipment subcontracts under the S&W Key Contract unrelated to the Construction Segment in question), State has approved all such Key Contracts and the contractors thereunder pursuant to Section 9.1(b) and Company and, if applicable, S&W have executed all such Key Contracts;

(k) if the contractor for O,A&M has not provided it, then State has received from another financially responsible third party acceptable to State the warranty and guaranty described in Section 7.2(c);

(l) from the Agreement Date to the date of Commencement of Construction on Phase 1, there has occurred no material adverse change in the financial condition of Company or S&W or in the ability of each of Company and S&W to diligently and efficiently perform its obligations under this Agreement and any Key Contract to which it is a party;

(m) there has occurred no material adverse change in the financial condition or ability to fully perform of any contractor under a Key Contract for Phase 1 from that existing at the time State approved the Key Contract pursuant to Section 9.1(b);

(n) State has received a written notice from Company and S&W of the names, addresses and trades of all contractors, subcontractors, vendors and material suppliers then under contract for the subject Construction Segment;

(o) Company and S&W are in compliance with the provisions of Article IX in all material respects;

(p) S&W has executed and delivered, and State has accepted the form and substance of, the S&W Guaranty;

(q) Company has submitted to State its agreements with its Lenders concerning the reserve account matters described in Section 12.2(b) and State has approved the same;

(r) Company has obtained and delivered to State, and State has accepted the form and substance of, the payment and performance bonds required for the subject Construction Segment pursuant to the approved contracting plan under Section 9.1(a);

(s) insurance policies required under Section 13.5 have been obtained and are in full force and effect. Company and S&W have delivered to State insurance certificates and proof of premium payment therefor, and, if State requests, Company and S&W have permitted State to review the insurance policies to determine compliance with Section 13.5;

(t) Company and S&W have provided State in writing with the name(s) of the person or persons who shall act as Company's and S&W's agent during construction for purposes of resolving construction and design issues as they arise during construction of Phase 1;

(u) Company and S&W have developed and delivered to State, and State has not, within 14 Days after receipt, disapproved quality control/quality acceptance and safety manuals in accordance with good commercial practice for the work under all prime construction, construction management and systems integration, testing and operating contracts pertaining to Phase 1:

(v) no litigation, arbitration or judicial or administrative proceeding is pending or threatened which does or could materially and adversely affect the validity and enforcement of this Agreement, the subject Construction Segment, Phase 1 generally, the Network generally, the use of Right of Way for the Network, the design, cost or timely construction of the Network within such Construction Segment, Phase 1 or generally, the right and ability of Company to operate the Network or conduct its business pertaining to the Network, the financial ability or creditworthiness of Company or S&W, the right of State to enter into and perform this Agreement, or the timely performance of the obligations of any party to this Agreement;

(w) Company has delivered to State copies of all Intellectual Property agreements, licenses and rights pertaining to Phase 1 of the Network and the Equipment, and State is satisfied that Company holds all such agreements, licenses and other rights necessary to lawfully operate and administer the Network and Equipment in accordance with the Performance Standards;

(x) State has received a list and copies of any bonds, security deposits or other financial undertakings required to be filed with any utility or any governmental authority in connection with the construction work;

(y) there shall exist no Company Default and no S&W Default or any circumstance which with the giving of notice or passage of time, or both, would become a Company Default or S&W Default; and

(z) the representations and warranties of Company and S&W made in this Agreement shall be true and correct in all material respects, and the act of proceeding with construction of each Construction Segment shall constitute affirmation by Company and S&W that their respective representations and warranties are true and correct at such time.

Section 5.6 Conditions to Commencement of Construction: Phase 2. In addition to the requirements and conditions under Sections 4.2(a) and (b), and except as provided otherwise in Section 5.7(d), Company shall not proceed with Commencement of Construction of the Network located within a Construction Segment of Phase 2 until the following conditions precedent are satisfied:

(a) Company and S&W have completed and obtained from State Acceptance of all of Phase 1 of the Network;

(b) except as provided otherwise in Section 4.1(a), Company has obtained all Regulatory Approvals, including all Permits, necessary to construct such Construction Segment;

(c) Company has submitted to State a proposed modification to the O,A&M Plan to include therein such Construction Segment in accordance with Section 7.3(d) and State has approved such modification, such approval not to be unreasonably withheld or delayed; and

(d) all the conditions precedent set forth in Section 5.5, except Sections 5.5(a), (f), (g) and (i), which for this purpose shall be read to apply to Phase 2 and the applicable Construction Segment in Phase 2, rather than Phase 1.

Section 5.7 Satisfaction, Benefit and Waiver of Conditions Precedent.

(a) State, Company and S&W shall establish a procedure for confirming in writing the satisfaction of the conditions precedent set forth in Sections 5.5 and 5.6. A condition precedent shall be deemed satisfied only when written confirmation thereof is delivered by State and Company.

(b) Except as provided in Section 15.2(c), all the conditions precedent set forth in Sections 5.5 and 5.6 are for the sole benefit of State. Any condition precedent may be waived by State; provided, however, that no person or entity shall be entitled to assume that State will waive or refuse to waive any condition precedent in the absence of strict compliance therewith, and waiver of a condition given in one instance shall not constitute or be construed as a waiver of the condition in any future instance. No waiver of any condition precedent shall be enforceable unless it is made in writing and signed by State. Unless State waives a condition precedent which requires action by Company and/or S&W to be satisfied, Company and S&W shall remain bound to use good faith and diligent efforts to satisfy the condition precedent. State's approval to proceed with construction in a Construction Segment shall not constitute a waiver by State of any then-existing Company Default or S&W Default.

(c) State agrees to reasonably consider requests by Company and S&W to commence plowing of trenches and installation of fiber in priority locations of Phase 1 before all relevant conditions precedent are satisfied. If State grants any such request, then (i) the conditions precedent not then satisfied shall not be deemed waived, but shall constitute conditions precedent to Company's and S&W's rights to install any Equipment, carry out any other construction work or commence operations and (ii) if any such condition precedent is not satisfied, Company and S&W shall assume all financial risks and consequences that may arise out of such circumstance as a result of State's exercise of its right to terminate this Agreement.

(d) State agrees to reasonably consider requests by Company to proceed with Commencement of Construction and installation of all or any portion of Phase 2 of the Network before Company and S&W have completed and obtained Acceptance of Phase 1 of the Network. If State grants any such request, then (i) no such construction or installation shall affect or extend the Schedule of Performance for construction and completion of Phase 1 and (ii) if Company and S&W thereafter fail to complete Phase 1 by the deadline set forth in the Schedule of Performance (as the same may be extended pursuant to this Agreement), Company shall assume all risks and consequences that may arise out of such circumstance under this Agreement, including but not limited to State's exercise of any right to terminate this Agreement and to take ownership and control of both Phase 1 and Phase 2, provided that in such event Company shall have the right to remove its Equipment from Phase 2.

Section 5.8 Construction Implementation.

(a) If Company and S&W proceed with Commencement of Construction of Phase 1 of the Network, Company and S&W shall cause the entire Phase 1 of the Network to be constructed, in accordance with Section 5.3(a) and the final Plans and Specifications for Phase 1 of the Network, and within the milestones set forth for construction of Phase 1 in the Schedule of Performance. Notwithstanding the foregoing or any other provision of this Agreement, in the event S&W is not paid when due under the Key Contract between Company and S&W for a reason other than S&W's unexcused failure to perform thereunder or unexcused failure to fulfill a condition precedent to its right to payment thereunder, or should construction funds become depleted or exhausted, S&W may, in its sole discretion, stop work, without incurring any liability under this Agreement for such work stoppage. No such work stoppage shall excuse Company from timely performance of its obligations under this Agreement.

(b) If Company proceeds with Commencement of Construction of any Construction Segment of Phase 2 of the Network, Company shall cause the entire Construction Segment to be constructed diligently and in accordance with Section 5.3(a) and the final Plans and Specifications for such Construction Segment.

(c) Company and S&W may elect to schedule construction, installation, integration, testing and Acceptance of the Network in Construction Segments; provided that no such election shall relieve Company and S&W of the obligation to construct the entirety of Phase 1 in accordance with Section 3.2(b) and the Schedule of Performance. Prior to Commencement of Construction of a Phase of the Network, Company and S&W shall prepare and submit to State a plan delineating the boundaries of all Construction Segments for such Phase. Such plan shall be subject to State's approval, which State shall not unreasonably withhold or delay. Company and S&W from time to time may change the designation of Construction Segments, provided the change conforms to the applicable milestones in the Schedule of Performance, does not adversely affect the capacities and services Company is obligated to provide State under this Agreement and State has approved the change in writing. State shall not unreasonably withhold or delay approval of any such change.

(d) In addition to the State Project Manager, State may provide an experienced and qualified construction agent or agents who shall have the right to locate at and/or regularly visit the construction site at any and all times. State, through such agents, shall have the right, exercisable at any time during and after construction and in a manner that does not interfere with work, to inspect, test, monitor, sample and examine all work and work in progress, all Equipment installed and all Network systems and components, make borings and excavations as part of any such inspection, testing, monitoring, sampling and examination, and review, comment on and disapprove Company's and S&W's construction of the Network in progress if it does not comply with the approved Plans and Specifications or applicable requirements of this Agreement.

(e) S&W shall execute and deliver to and for the direct benefit of State (i) a written guaranty of completion of the State's portion of the Network in Phase 1, guaranteeing timely

completion thereof in accordance with Section 5.3(a), (ii) a written warranty that S&W's professional services will be performed in accordance with recognized professional standards and (iii) a written warranty against "significant defect" in design, location, construction, civil engineering, materials and workmanship (collectively the "S&W Guaranty"). For purposes hereof, a "significant defect" is one which adversely affects satisfaction of the Performance Standards with respect to State's portion of the Network in Phase 1, regardless of the cost to correct. With respect to items (ii) and (iii) above, such warranties shall encompass all Claims made within one year following the last Acceptance Date for the entirety of State's portion of Phase 1 of the Network. The form and substance of the S&W Guaranty shall be reasonably acceptable to State and Company shall have the right to review and comment thereon before it is finalized. The S&W Guaranty shall include liability for all costs and expenses, including but not limited to reasonable attorneys' and expert witness' fees and costs, State incurs to enforce and collect upon the same. The S&W Guaranty shall provide that no alterations, extensions of time, additional work or other changes authorized by this Agreement or undertaken by Company with S&W's consent shall exonerate S&W from its obligations thereunder. The S&W Guaranty shall be in addition to, and shall not limit, any other rights and remedies available to State against S&W under this Agreement or under the Key Contract between Company and S&W (after any assignment of Company's rights thereunder to State).

(f) As and when any contract is executed with any contractor, subcontractor, vendor or material supplier for a Construction Segment, Company and S&W shall deliver to State a written notice of the name, address and trade of such contractor, subcontractor, vendor or material supplier.

(g) In consideration for the substantial benefits and value provided to State under this Agreement, MnDOT shall make available to Company and S&W, for placing fiber optic cable and installing Nodes for the Network, MnDOT's owned, longitudinal innerducts located in the I-94 Right of Way between Maple Grove in Hennepin County and St. Cloud in Stearns County, and in the I-494 Right of Way between Plymouth in Hennepin County and Maple Grove. Such innerducts were constructed and delivered to State pursuant to the certain Innerducts Placement Agreement entered into under the Special Statute by and between State, acting by and through the Commissioner of MnDOT, and AT&T Communication of the Midwest, Inc. State makes no warranty or representation, and shall have no liability whatsoever, respecting the location, design, construction, materials, workmanship, condition, suitability or fitness for purpose of such innerducts.

(h) Neither Company nor S&W shall permit or suffer any Right of Way or other property of the State to be subjected to any mechanics', materialmen's or other liens whatsoever. If any liens are recorded against, affecting or purporting to affect any Right of Way or other property of the State, Company and S&W shall immediately cause such liens to be discharged and removed therefrom.

(i) Company and S&W agree and acknowledge that (i) the fiber optic lines to be installed in the ground for the Network or for Collocating Customers will constitute an

“underground facility” as defined in Minnesota Statutes 216D.01, Subd. 11, (ii) Company and S&W will perform “excavations” as defined in Minnesota Statutes 216D.01, Subd. 5 and (iii) with respect to the installation of such fiber optic lines Company and S&W shall be subject to all the obligations and liabilities imposed upon excavators pursuant to Ch. 216D, Minnesota Statutes. Company and S&W shall perform and comply with all such obligations. Upon request of Company and S&W, MnDOT shall assist them in obtaining the form of excavator’s notice.

Section 5.9 Changes.

(a) All changes or additions to or deletions from the Plans and Specifications or the approved alignment for the Network shall be subject to the prior review and written approval of the State, according to the same procedures as set forth in Section 5.4(c).

(b) At Company’s or S&W’s request and subject to availability of personnel, State shall provide one or more qualified field representatives with authority to review and approve or disapprove field changes, additions and deletions in the course of Network construction. The State may appropriately limit such representative’s authority to approve field changes, additions and deletions where the proposed change, addition or deletion is of a type, nature or scale that, in State’s judgment, review and approval should be conducted by a superior State official (including the State Project Manager). Company and S&W shall accurately document all field changes, additions and deletions on the approved Plans and Specifications or in another manner consistent with prudent industry practice.

(c) Company shall solely bear the expense of all changes, additions and deletions, except as provided otherwise in Section 5.10 respecting State Major Changes.

Section 5.10 State Major Changes.

(a) With respect to each Construction Segment of Phase 1, State may require Company and S&W to undertake, at State’s cost and expense, a State Major Change at any time prior to the Acceptance Date for such Construction Segment by delivering to Company a written request setting forth the State Major Change desired. As expeditiously as possible, and in any event not later than 90 Days after receiving such written request, Company and S&W shall prepare and submit to State (i) plans and specifications for the requested State Major Change, (ii) a schedule for constructing and completing such State Major Change, (iii) any proposed modifications to the Schedule of Performance for affected portions of the Network to compensate for any additional time required by reason of such State Major Change and (iv) a statement and detailed breakdown of the amount which would be charged for such State Major Change. Such amount shall be priced in the same manner as the pricing for the base Network under the Key Contract between Company and S&W.

(b) If State approves the plans and specifications, schedule and pricing for a State Major Change, State, Company and S&W shall thereafter execute and deliver a written change order specifying the nature of the State Major Change, the schedule of performance for the

agreed changes, the modifications, if any, to the Schedule of Performance for other affected portions of the Network, and the amount to be charged for the State Major Change.

(c) After the State approves a State Major Change pursuant to subsection (b) above, Company and S&W shall construct, install, inspect and test the State Major Change according to the schedule of performance therefor and all other terms and conditions of this Agreement applicable to construction, installation, inspection and testing.

Section 5.11 Optional Phase 1 Routes.

(a) The parties acknowledge that State has a strong need to add fiber optic capacity along Optional Phase 1 Routes to support ITS and other State telecommunications needs and to have such fiber optic system managed and maintained by a single point of control and contact in order to protect public safety and promote efficient management of its Right of Way. Company has a strong desire to include Optional Phase 1 Routes in the Network if financially feasible, but cannot undertake such obligation as of the Agreement Date. In order to induce Company to include the Optional Phase 1 Routes, so that State's needs can be accomplished, State grants to Company the option and right of first negotiation set forth below.

(b) Company shall have the option, but not the obligation, to include in Phase 1 of the Network any or all of the Optional Phase 1 Routes. Company's option under this subsection (a) to include an Optional Phase 1 Route shall automatically expire, without notice or demand, if Company for any reason has not, on or prior to December 31, 1999, (i) delivered to State written notice of its election to include it in Phase 1 and (ii) satisfied all conditions precedent to Commencement of Construction thereof, as set forth in Section 5.5. If Company timely exercises its option as to any Optional Phase 1 Route, Company shall be obligated to achieve with respect thereto Substantial Completion, required test results and cutover of service to State according to the same milestones (including liquidated damage milestones) as set forth in the Schedule of Performance for the balance of Phase 1. Upon expiration of such option as to any Optional Phase 1 Route, no party to this Agreement shall have any further rights or obligations respecting the Optional Phase 1 Route except as provided in subsection (c) below, and the Optional Phase 1 Route shall cease to be subject to Section 11.1 as provided in Section 11.1(d).

(c) Company shall have and is hereby granted a right of first negotiation with the State for the purpose of designing, permitting, installing, constructing, administering, managing, operating, maintaining, repairing and replacing any Optional Phase 1 Route for which Company does not timely exercise its option under subsection (b) above, subject to the following terms and conditions:

(i) such right of first negotiation shall commence as to any such Optional Phase 1 Route when its option with respect thereto under subsection (b) above expires without exercise, and shall expire on the first to occur of (A) ten years after the last Acceptance Date for Phase 1 or (B) termination of this Agreement for any reason;

(ii) if at any time during the period this right of first negotiation is in effect as to an Optional Phase 1 Route either (A) State desires to offer, or solicit proposals for, the use of such Optional Phase 1 Route for the installation of fiber optic cable and related equipment or (B) Company desires to add such Optional Phase 1 Route to the Network, State or Company, as the case may be, shall first deliver to the other party written notice of such fact;

(iii) for a period of 120 Days after the delivery of any such notice, Company and State shall engage in good faith negotiations concerning the selection and obligations of the contractors under all Key Contracts for the design, engineering and construction work, the construction schedule and milestones for Substantial Completion, liquidated damages, Cutover Dates and Acceptance, and liquidated damages formulas for failure to satisfy construction schedule milestones, without obligation, however, to agree upon any particular terms or conditions. If the parties reach agreement upon such terms and conditions, then they shall execute and deliver a binding, written modification to this Agreement setting forth such terms and conditions respecting such Optional Phase 1 Route, and thereupon it shall be deemed included in Phase 1 of the Network for all purposes under this Agreement, and automatically become subject to all the other terms and conditions applicable to Phase 1 of the Network under this Agreement, including but not limited to State's rights under Section 3.3 (except Section 3.3(i)), the provisions of Section 5.12 and Company's rights under Section 11.1; and

(iv) upon expiration of the right of first negotiation, or upon any earlier expiration of the 120-Day negotiating period without consummation of a modification to this Agreement, as to any Optional Phase 1 Route, Company shall have no further rights or obligations respecting the Optional Phase 1 Route, and State shall be free to use such Right of Way on its own, and/or to offer and grant access to such Right of Way to any other party on any terms, to install and use fiber optic facilities.

Section 5.12 Facilities for Collocating Customers. Company acknowledges that State desires Company to install Collocating Customer facilities to enhance competition and service within an already competitive State telecommunications market. State acknowledges that Company may need agreements with Collocating Customers and the revenues therefrom to make feasible the provision of fiber optic cable to rural areas and the provision of a new, competitive telecommunications network in the State. Accordingly, Company shall have the obligation and right to install fiber optic cable and related equipment for Collocating Customers which execute User Agreements on terms acceptable to Company and in compliance with Section 7.7, on the following terms and conditions:

(a) the fiber optic cable must be separate and distinct from, collocated with and installed concurrently with Company's installation of the fiber optic cable for the Network, so that multiple entries and construction activities on the Right of Way are avoided;

(b) such fiber optic cable must be owned and operated by the Collocating Customer separately from the Network;

(c) the Collocating Customer must first enter into a User Agreement in accordance with Section 9.2;

(d) all installations for Collocating Customers within Right of Way or on other State property shall be shown in plans and specifications which shall be subject to State's review, comment and approval or disapproval pursuant to Section 5.4(c);

(e) State shall have the right to limit the locations of Collocating Customer nodes and equipment on Right of Way and/or to require that such nodes and equipment be located off of Right of Way;

(f) State's right of access to and use of space in Company's huts and pedestals shall take priority over any such use for Collocating Customer equipment;

(g) all construction and installation work for Collocating Customer facilities located in Right of Way or on other State property shall be performed solely by Company and S&W and their respective subcontractors;

(h) Company and S&W shall not be entitled to any extension of the Schedule of Performance on account of the design or installation of Collocating Customer facilities without State approval in its sole discretion;

(i) in the event State requests a State Major Change to the Network which incidentally requires a change to the plans for or construction of Collocating Customer facilities, State shall not be responsible for any changes respecting the Collocating Customer facilities;

(j) at MnDOT's request, the Collocating Customer shall obtain as-built Permits from MnDOT for its completed facilities;

(k) relocation of Collocating Customer facilities shall be governed by Section 11.2(i);

(l) no Collocating Customers, and no officers, employees, agents or contractors of Collocating Customers (other than Company and its contractors) shall have any right of entry or access onto Right of Way, except as expressly provided otherwise in Section 9.2(g); and

(m) the Collocating Customer facilities shall be subject to removal from Right of Way and other State property in accordance with Section 15.4(d).

ARTICLE VI NETWORK COMPLETION, TESTING AND ACCEPTANCE

Section 6.1 Substantial Completion

(a) Company and S&W shall provide State with not less than 30 Days' prior written notice of the date they determine that Substantial Completion will occur with respect to any Construction Segment. During the 30-Day notice period, State's, Company's and S&W's authorized agents shall meet and confer and exchange information on a regular cooperative basis with the goal being State's orderly, timely inspection and review of such Construction Segment.

(b) During their inspection and review, such agents shall jointly prepare for delivery to Company and S&W a Punch List. MnDOT, DOA, Company and S&W shall have the right to add items to the Punch List and none of them shall remove any item added by another without the other's express permission. Company and S&W shall immediately commence work on the Punch List items and prosecute such work to completion to the reasonable satisfaction of State's authorized agents within 30 Days after issuance of the Punch List, provided that if the work to be completed cannot through the exercise of diligence be completed within such 30 Days and Company and S&W immediately begins such work upon receipt of the Punch List, then such time period shall be extended for the period of time necessary to diligently prosecute such work to completion.

(c) Substantial Completion of a Construction Segment shall be deemed to occur only when Company and S&W deliver to State a written, signed certificate of Substantial Completion of such Segment and the State Project Manager has delivered to Company and S&W written notice concurring with such certificate of Substantial Completion. In determining whether to give concurrence, the State shall consider whether the physical characteristics of the Construction Segment are such that the Construction Segment is capable of delivering telecommunications services to State at the capacities required under this Agreement and in compliance with the Performance Standards, and whether the Construction Segment complies with the Plans and Specifications and the standards set forth in Section 5.3. The State Project Manager shall not delay issuance of written notice of concurrence by reason of outstanding Punch List items which do not, in his or her opinion, adversely affect delivery of telecommunications services to State at the required capacities and in compliance with the Performance Standards. No such written concurrence by the State Project Manager shall, however, create any inference or conclusion regarding whether the Construction Segment in fact has such capability and capacity, complies with or will satisfy the Performance Standards or satisfies such other requirements.

(d) From and after Substantial Completion of a Construction Segment, Company and S&W shall have no right to reenter the subject Right of Way or to open trenches therein for the purpose of laying additional fiber. Any such activity shall be subject to MnDOT's prior written approval, which MnDOT may withhold or condition in its sole discretion.

Section 6.2 Network Acceptance Test Plan.

(a) Not earlier than six months nor later than three months prior to the scheduled date for Substantial Completion of the first Construction Segment for Phase 1, Company, in conjunction with S&W and the contractors under the Key Contracts for Equipment supply and installation and systems integration, testing and acceptance, shall prepare and submit to the State a proposed detailed plan to test the Network and the Construction Segments thereof (the "Acceptance Test Plan").

(b) The Acceptance Test Plan shall include the following features and provisions (collectively the "Testing Requirements"):

(i) specific standards, conditions and test criteria for the Network which the parties mutually determine will, if achieved, satisfactorily indicate that the Network does, or is likely to, meet or exceed each of the Performance Standards over all routes and circuits under all specified simulated loads and operating conditions (the "Testing Criteria");

(ii) comprehensive and detailed testing methods, procedures, simulated loads and operating conditions and schedules, in the form of a manual, for comprehensive integration and testing of all mechanical and electrical systems and components of the Network, formulated to verify achievement of all Network Testing Criteria (the "Testing Procedures");

(iii) the simulated loads and operating conditions shall include testing in the following types of environments:

(A) normal Network operations under low, normative and high volumes of traffic; and

(B) emergency back-up operations assuming several different scenarios of Equipment malfunction under low, normative and high volumes of traffic;

(iv) the Testing Procedures shall include individual Equipment test procedures as well as detailed, fully integrated systems test procedures in each of the test environments described in item (iii) above;

(v) the Testing Procedures shall include manufacturers' suggested systems integration and testing procedures;

(vi) the Testing Procedures shall include thorough testing methods and sequences: and as guidance to the parties such testing methods and sequences may, but need not necessarily, be organized as follows:

(A) first, test runs of power generation and data transmission and receiving Equipment, including repeaters, SONET equipment and multiplexers to verify

operations in accordance with the Testing Criteria and to create specified simulated loads and operating conditions;

(B) second, test runs of routers, bridgers, servers, DACS (if any) and asynchronous transfer mode equipment;

(C) third, on line test runs of short duration of all Equipment and all interconnected State equipment to verify achievement of applicable Testing Criteria at specified simulated loads and operating conditions;

(D) fourth, after all systems and Equipment are up and running, test runs of short duration to test the integration and efficacy of back-up systems and Equipment under specified simulated operating conditions, including creation of deliberate failures and malfunctions in power sources, fiber cable, receiving and transmission Equipment and other Equipment;

(E) fifth, a comprehensive test of the integration and efficacy of the Network or portion thereof being tested and back-up systems under all specified operating conditions, including creation of deliberate failures and malfunctions in power sources, receiving and transmission Equipment and other Equipment, it being recognized that systems integration testing will be necessary as each Construction Segment is added to already operating portions of the Network but that such systems integration testing will not necessarily involve re-testing of the entire Network; and

(F) sixth, further testing and re-testing as necessary to verify achievement of all Testing Criteria.

(vii) The Testing Procedures shall include testing after each ring is completed to determine ring recovery.

(viii) The Testing Procedures shall include procedures after testing is completed for transfer and cutover of telecommunications services being provided to State via the Network from the existing facilities and routes to the Network. These procedures shall include the following:

(A) a schedule, by circuit and by type of telecommunications service, for transferring traffic to the Network;

(B) transfer of voice, data and video circuits on a site-by-site basis;

(C) time duration for completing the transfer of all traffic; and

(D) any other provisions which Company or S&W deems necessary or appropriate.

(c) State shall have the right to review, comment on and/or approve or disapprove any portion of the proposed Acceptance Test Plan as follows:

(i) if State comments or disapproves in writing, Company shall (except as provided otherwise in subsection (g) below) make appropriate modifications in order to address the comments or reasons for disapproval and shall resubmit to State the proposed Acceptance Test Plan as modified for further review, comment on and/or approval or disapproval pursuant to this subsection; and

(ii) if State does not provide written comments or written disapproval of the proposed Acceptance Test Plan within 30 Days after the State Project Manager receives it (plus the period of any delay caused by an event of Force Majeure), Company may consider it approved and proceed with its use and application.

(d) State's action or lack of action to review, comment on, approve or disapprove the Acceptance Test Plan shall not in any manner:

(i) bar State from subsequently denying Acceptance of State's portion of the Network or any Construction Segment thereof for failure of Company to establish satisfaction of the Testing Criteria;

(ii) waive, alter or diminish the obligations of Company to satisfy the Performance Standards or the obligations of S&W under the S&W Guaranty;

(iii) waive, alter or diminish the rights, remedies and protections of State under this Agreement or the S&W Guaranty; or

(iv) waive, alter or diminish the full force and effect of Section 13.1.

(e) Upon Company's reasonable request made at any time during design or installation of Phase 1 of the Network or any portion thereof, State shall promptly issue supplements, refinements and clarifications of the Performance Standards reasonably necessary for Company to prepare the Acceptance Test Plan.

(f) State and Company shall cooperate to refine and improve the Testing Requirements based on discovery of new or improved methods and any changes to the Network design, materials, components, systems or equipment.

(g) Company may object to any comments or disapprovals from State concerning the proposed Acceptance Test Plan only if it in good faith determines that the changes required to satisfy such comments or disapprovals are unnecessary or will be ineffective to verify achievement of the Performance Standards, and only by delivering to State, within 15 Days after receipt of the written comments or written disapprovals, written objection explaining in detail the grounds for objection. Any ensuing disputes shall be resolved through the applicable dispute resolution mechanisms set forth in Section 16.7.

Section 6.3 Testing.

(a) Promptly after a certificate of Substantial Completion is issued and countersigned, Company and S&W shall cause the contractor under the approved Key Contract for Network integration, testing and acceptance (the "testing contractor") to conduct testing of the Network or subject Construction Segment and all alternate and back-up systems. The testing contractors must be independent of and unaffiliated with Company. All tests shall comply with the Testing Requirements. If Company requests separate testing and Acceptance of Construction Segments in Phase 1 rather than one test and Acceptance for the entirety of Phase 1, then the testing of each Construction Segment shall include testing for proper integration of such Construction Segment with all other Construction Segments for which notices of Acceptance were previously issued.

(b) Neither Company nor S&W shall conduct any Network integration or testing until it has first given State at least five Days' prior written notice setting forth the scheduled date for, location of and a reasonably detailed description of such activity. State's authorized agents shall have the right to be present at and to monitor all Network integration and testing activity, and Company shall keep such agents fully informed concerning such activity.

(c) Upon completion of each test method and sequence, and before cutover of service to the State, Company and S&W shall cause the testing contractor to prepare a written report setting forth in reasonable detail the tests conducted, the results of such tests, analyses and conclusions regarding satisfaction of the Testing Requirements, and recommendations. If any Testing Requirement is not satisfied, Company and S&W shall within 15 Days after the failure is discovered, complete or commence to complete and diligently pursue corrective work to remedy the problem and cause the testing contractor to repeat the testing to verify satisfaction. Upon successful completion of all Testing Requirements for the portion of the Network in question, including all alternate and back-up systems, Company and S&W shall cause the testing contractor to issue a written certification, for the express benefit of Company, S&W and State and in form reasonably satisfactory to State, certifying that all testing has been performed in accordance with the Testing Requirements and the Network or portion thereof tested and all alternate and back-up systems satisfy all Testing Requirements and will or are likely to satisfy the Performance Standards (with such exceptions as the testing contractor deems necessary). Company and S&W shall deliver an original of each such report and certification to the State immediately upon issuance thereof.

(d) State, Company and S&W, working cooperatively, shall transfer telecommunications services for the State from the existing facilities to the Network or applicable Construction Segment thereof in accordance with the cutover procedures. State, Company and S&W shall effect such transfer of services promptly after State has received and approved all applicable test reports and certifications, such approval not to be unreasonably withheld or delayed, and determined that (i) Company and S&W have conducted and completed integration and testing of the Network or Construction Segment, as applicable, in accordance with the Acceptance Test Plan and (ii) the Testing Requirements have been satisfied for the Network or such Construction Segment. State's approval and determination shall relate back in

time to, and be deemed to occur as of, the date State receives all such test reports and certifications.

(e) All testing and re-testing shall be at Company's and S&W's sole expense.

(f) Throughout the Term State shall have the right of access to the test bed facility Company utilizes for the Network, regardless of location, to test State's equipment and applications, at State's cost. State may exercise such right through Company in order to take advantage of Company's contracted rates for using the test bed facility. In any contract Company enters into for a test bed facility, Company shall provide for State's rights of access and pricing.

Section 6.4 Network Acceptance.

(a) State shall issue notice of Acceptance of a Phase or Construction Segment only when all the following conditions are satisfied:

(i) State has issued its written concurrence of Substantial Completion for the entire Network within the Phase or Construction Segment, as applicable;

(ii) cutover of State service to the subject Phase or Construction Segment has occurred and the same has performed in accordance with the Performance Standards without failure or disruption for a consecutive period of 30 Days, and for this purpose the definition of "failure or disruption" shall be set forth in the Key Contract for O,A&M and subject to State's reasonable approval;

(iii) State has received and approved final record maps and as-built drawings and specifications for such Phase or Construction Segment, such approval not to be unreasonably withheld or delayed;

(iv) State has determined that Company is ready and able to normally and continuously operate the Network within such Phase or Construction Segment in accordance with the approved O,A&M Plan;

(v) State has determined that Company has complied with the requirements regarding Escrowed Material set forth in Section 17.8; and

(vi) the representations and warranties of Company and S&W made in this Agreement shall be true and correct in all material respects, and the act of giving the written notice requesting certification of Acceptance shall constitute affirmation by Company and S&W that their respective representations and warranties are true and correct at such time.

(b) When all the conditions set forth in subsection (a) above are satisfied, State shall promptly issue to Company and S&W a written notice of Acceptance of the applicable Phase or

Construction Segment. State shall set forth in such notice the Acceptance Date, which shall be the date the notice is executed and issued. Once State has issued a written notice of Acceptance:

- (i) State shall have no right to revoke it absent fraud;
- (ii) Company shall then, and only then, be entitled to operate the Network with respect to the subject Construction Segment; and
- (iii) State shall not be entitled to require any changes (including State Major Changes) with respect to the subject Construction Segment except as provided otherwise in Section 7.6.

ARTICLE VII OPERATIONS, ADMINISTRATION, MAINTENANCE AND REPLACEMENT

Section 7.1 Company Responsibility.

(a) Throughout the Term Company, at its sole cost and expense, shall bear full responsibility for operating, administering, maintaining, repairing and replacing, or causing to be operated, administered, maintained, repaired and replaced, the Network, in accordance with the terms and conditions of this Article VII, the terms and conditions of all Permits and other Regulatory Approvals, the Utility Accommodation Policy, and all other applicable Laws and Regulations. Notwithstanding the foregoing, Company shall have no obligation:

- (i) to operate State's dark fiber strands; or
- (ii) to operate, administer, maintain, repair or replace any portion of the ITS and TMC work performed pursuant to Section 3.3(e), except maintenance, repair and/or replacement (A) where required due to defect in Company's or S&W's design, location, construction, engineering, materials, equipment or workmanship and (B) for any fiber which is collocated with Network fiber.

(b) Without limiting the foregoing, Company agrees and acknowledges that (i) the fiber optic lines to be installed for the Network or for Collocating Customers will constitute an "underground facility" as defined in Minnesota Statutes 216D.01, Subd. 11, (ii) Company will be an "operator", as defined in Minnesota Statutes 216D.01, Subd. 9, of such fiber optic lines and (iii) with respect to such fiber optic lines Company shall be subject to all the obligations and liabilities imposed upon operators pursuant to Ch. 216D, Minnesota Statutes. Company shall perform and comply with all such obligations. Upon request of Company, MnDOT shall assist Company in obtaining the form of operator's notice.

Section 7.2 Performance Standards.

(a) Attached to this Agreement as Exhibit C are preliminary Performance Standards for the Network. Prior to Commencement of Construction for Phase 1, Company shall prepare proposed final detailed Performance Standards setting forth the minimum standards and criteria for the performance and operation of the Network for the benefit of State. The final Performance Standards shall embody the requirements for Company to create and administer a continuously operating, redundant and fail-safe backbone communications transport facility for State. The final Performance Standards shall be consistent with Exhibit C, unless otherwise agreed to in writing by State and Company. The final Performance Standards shall be subject to the prior written approval of State, which approval State shall not arbitrarily withhold or delay. Company shall be obligated to satisfy the Performance Standards throughout the Term after the first Cutover Date.

(b) Prior to commencement of Construction for Phase 1, State, Company and the contractor under the Key Contract for O,A&M shall negotiate in good faith a schedule of per hour and per diem liquidated damages which shall be owing for specified failures to satisfy Performance Standards, including but not limited to interruptions in transmission capacity and catastrophic service failures. The agreed-upon schedule of liquidated damages shall be set forth in a written modification to this Agreement. The schedule of liquidated damages shall be subject to the approval of State, Company and such contractor, each in its good faith discretion.

(c) At all times from and after the first Cutover Date and until five years after the last Acceptance Date for Phase 1, Company shall maintain or cause to be maintained in full force and effect, from the approved contractor under the O,A& M Key Contract or other financially responsible third party acceptable to State in its sole discretion, a written warranty and guaranty of performance of the Network in accordance with the Performance Standards, encompassing all Claims respecting performance of the Network made during the warranty period. The warranty and guaranty shall include any failures of performance by reason of, among other things, any defects or deficiencies in design, engineering, installation or construction of the Network. The warranty and guaranty shall be for the direct benefit of the State and Company and in form acceptable to the State and Company each in its good faith discretion.

(d) State's review and approval of the final Performance Standards and the performance warranty and guaranty, and agreement upon a schedule of liquidated damages shall not in any manner waive, alter or diminish:

(i) the obligations of Company to satisfy the Performance Standards, the obligations of S&W under the S&W Guaranty or the obligations of State to Company and S&W;

(ii) the rights, remedies and protections of State under this Agreement or the S&W Guaranty; and

(iii) the full force and effect of Section 13.1.

(e) State and Company, working together cooperatively, shall appropriately modify the final Performance Standards from time to time during the Term as and when changes and technology upgrades to the Network are implemented, in order to maintain consistency with such changes and technology upgrades. In no event, however, shall a Performance Standard be weakened by reason of a change or technology upgrade to the Network. Except for the foregoing, neither party shall have any right to require modifications to the final Performance Standards.

Section 7.3 O,A&M Plan.

(a) Prior to Commencement of Construction for Phase 1, Company, in conjunction with the contractor under the Key Contract for operation, administration and maintenance of the Network, shall prepare a proposed detailed O,A&M Plan. The O,A&M Plan shall be consistent with and designed to assure satisfaction of the Performance Standards. The O,A&M Plan shall

be subject to the prior written approval of State in its good faith discretion, which approval State shall not arbitrarily withhold or delay.

(b) As guidance to the parties, the O,A&M Plan should incorporate provisions similar to some or all of the following:

(i) Specific maximum times for responding to and curing specified types of service failures;

(ii) a detailed maintenance schedule for all Network systems, components and Equipment, including both routine and emergency procedures and timing of prior notice to State of scheduled and unscheduled work;

(iii) a detailed manual on operating and administrative procedures and staffing to be located and responsibilities to be carried out at the Network operations center;

(iv) detailed procedures for operating, monitoring and responding to the Network alarm system;

(v) detailed standards and procedures for accessing the Network, and limitations on the times of day for accessing the Network for routine, preventive or scheduled maintenance, repair and replacement, consistent with the terms and conditions of the Permits and the Utility Accommodation Policy and with State's need to assure public safety in and efficient management of the Right of Way;

(vi) minimum requirements under which Company or its vendors shall inventory, and general locations for storing and staging such inventory of, materials, components, Equipment and supplies for maintenance, repairs and replacements, based on a stated analysis of expected useful lives of such components, Equipment and supplies;

(vii) required minimum distances of the offices of operations, administration and maintenance service personnel from key, designated points on the Network;

(viii) Equipment and other manufacturers' suggested spare parts lists and maintenance and operating procedures;

(ix) a minimum requirement for monthly meetings with State network operations staff to review service levels, problem logs and related matters; and

(x) a minimum requirement for monthly reports to State on Network performance, problem status and volumes, and use of State's allocated capacity.

(c) State's review and approval of the O,A&M Plan shall not in any manner waive, alter or diminish:

(i) the obligations of Company to satisfy the Performance Standards, the obligations of S&W under the S&W Guaranty or the obligations of State to Company and S&W;

(ii) the rights, remedies and protections of State under this Agreement or the S&W Guaranty; and

(iii) the full force and effect of Section 13.1.

(d) Company shall propose modifications, supplements and clarifications of the O,A&M Plan whenever Company or the State Project Manager determines that the O,A&M Plan is insufficient to satisfy the Performance Standards, whenever Company elects to construct an Optional Phase 1 Route pursuant to Section 5.11(a) or (b) or whenever a Construction Segment of Phase 2 is to be added to Network operations. Company may propose modifications, supplements and clarifications to the O,A&M Plan at any time Company desires to upgrade or improve procedures or efficiency for operations, administration, maintenance, repair or replacement, provided that such modifications, supplements and clarifications shall at all times be consistent with and designed to assure satisfaction of the Performance Standards. Major modifications, supplements and clarifications shall be subject to the prior written approval of State, which shall not be unreasonably withheld or delayed.

(e) Company shall implement the approved O,A&M Plan, as it may be modified, supplemented or clarified from time to time, throughout the Term after Acceptance of Phase 1 of the Network.

Section 7.4 Entry onto Right of Way.

(a) Company shall not share with other persons or entities access to any trenches, innerducts, conduit or cable Company or S&W constructs or installs for the Network; provided that:

(i) in accordance with Section 5.11, Company and its contractors may install fiber and equipment of Collocating Customers concurrently with construction and installation of the Network;

(ii) Company may permit access by Company's maintenance and operation contractors via manholes and other access points for the purpose of operating, administering, maintaining, repairing and replacing the Network and the fiber cable and equipment of Collocating Customers, subject to the terms and conditions of all Permits and other Regulatory Approvals and this Section 7.4; and

(iii) State shall have full rights of access as provided in this Agreement, Permits or Laws and Regulations.

(b) Company shall not use or occupy the roadway portion of any Freeway Right of Way to obtain access to the Network or the fiber cable and equipment of Collocating Customers

for performing operations, maintenance, repair or replacement, unless expressly approved by MnDOT in writing, such approval not to be arbitrarily withheld or delayed, or in the Permit conditions.

(c) Company and any of its contractors performing maintenance and operations within or on any Non-Freeway Highway, including ramps, feeders, interchanges or connectors into any State Trunk Highways or related transportation facilities, shall conform to then applicable published MnDOT standards relative to signing, cone and barricade placement, equipment requirements, traffic control methodology, traffic control plans and safety standards.

(d) All operations and maintenance equipment of Company or its contractors operating within any Right of Way shall be marked and all maintenance personnel shall wear colors, lettering, badges or other identifiers on uniforms, to assure clear differentiation from operations and maintenance equipment owned by MnDOT and from uniforms worn by MnDOT employees.

Section 7.5 Monitoring Performance.

(a) State shall have the right at any time, upon 24 hours prior notice (and without notice in case of emergency) to:

(i) enter the Network operations center and any other portion of the Network for the purpose of inspecting, monitoring and evaluating the operation, administration, maintenance, repair and replacement of the Network and determining compliance with this Article VII; and

(ii) accompany and monitor any personnel of Company or its contractors performing operation, administration, maintenance, repair or replacement of the Network.

(b) State shall have the right at all times to electronically monitor the operations and status of the Network at the State's communications operations center and recovery site.

Section 7.6 Renewal, Replacement and Technology Upgrades.

(a) Throughout the Term, at its sole cost and expense, Company shall (i) make all renewals and replacements to the Network as shall be necessary to satisfy all Performance Standards and (ii) subject to subsection (b) below, incorporate into Phase 1 of the Network all generally recognized advances and improvements in technology, materials and equipment applicable and available to fiber optic communications systems and equipment ("technology upgrades"), but only to the extent necessary to keep Phase 1 of the Network up to date with technology upgrades then being generally implemented with respect to comparable fiber optic communication systems and equipment.

(b) Company shall be obligated to undertake technology upgrades under subsection (a)(ii) above only if, when and to the extent funds are available for such work from the following sources:

(i) the Technology Upgrade Fund;

(ii) additional Project Debt, which Company shall be obligated to issue for funding technology upgrades if and when (A) permitted by the terms of existing Project Debt and, if required under the terms of existing Project Debt, consented to by the Lenders, and (B) the proceeds thereof plus any other available funds under this subsection (b) will be sufficient to pay the estimated cost of a reasonably conceived minimum scope of technology upgrade work;

(iii) federal and/or other governmental grants and/or insurance proceeds eligible or available to pay for such technology upgrades; and

(iv) manufacturer grants and credits available for such technology upgrades.

(c) Any right Company has under subsection (b) above to defer technology upgrades shall have no effect on the scope or interpretation of Company's obligations and indemnities under this Agreement.

(d) Nothing in this Section shall be construed to require technology upgrades solely to increase the transport capacity of the Network.

Section 7.7 Rate Structures and Publication.

(a) At all times throughout the Term Company shall maintain, offer, accept, implement and adhere to written, uniform and non-discriminatory rates and charges for all similarly situated customers and potential customers for such customer's rights to use or access the Network or to become Collocating Customers. Company from time to time may modify, supplement or revise its rates and charges for use of or access to the Network, so long as such rates and charges, as modified, supplemented or revised, continue to provide uniform and non-discriminatory rates and charges for use of or access to the Network or for collocating fiber optic cable for similarly situated customers and potential customers. The term "similarly situated customers and potential customers" is intended to permit Company to maintain, offer, accept, implement and adhere to different rates and charges for different classifications of customers (including but not limited to Collocating Customers) based on commercially reasonable considerations and distinctions, such as but not limited to the volume of capacity in the Network utilized or the volume of data transported by a particular customer or the length of time for which any particular customer commits to the utilization of a specified volume of capacity in the Network or a specified volume of data transported.

(b) Company shall file with State, at least ten Days prior to effectiveness, true and complete copies of all written schedules or other documents which identify and describe

Company's various classifications of customers and potential customers (including but not limited to Collocating Customers) and the rates and charges applicable to each such classification, and all modifications, supplements and revisions of such classifications, rates and charges prepared pursuant to subsection (a) above.

(c) At Company's expense, State shall publish Company's classifications, rates and charges for use of or access to the Network and for collocating fiber cable and all modifications, supplements and revisions thereto. In addition, State shall publish the provisions of this Agreement on the consideration State is receiving from Company (primarily Section 3.3). Publication shall be made in the same manner by which the Commissioner of MnDOT publishes notices of other formal actions required by law to be published.

(d) Company recognizes, acknowledges and confirms that its covenants in Section 5.12 and this Section 7.7 necessarily require that it offer use of and access to the Network, and collocation of fiber cable on the terms of this Agreement, to every customer and potential customer (including but not limited to Collocating Customers) which is financially qualified under general commercial practices.

Section 7.8 Affiliate Transactions. In the event Company, any Company Related Party, any entity with a direct financial interest in the Network, or any entity otherwise controlling, controlled by or under common control with Company or with an entity having a direct financial interest in the Network is or becomes a user of the Network or a Collocating Customer, Company shall be obligated to:

(a) execute a User Agreement with such entity complying with Section 9.2 and setting forth all the pricing, terms and conditions respecting use of and access to the Network or the collocation of fiber cable by such entity;

(b) deliver to State a true and complete copy of the User Agreement and Company's accounting records respecting revenues from such entity within ten Days after request therefor; and

(c) charge such entity the same rates and charges as it does for similarly situated, unaffiliated, non-interested customers and users of the Network or similarly situated, unaffiliated, non-interested Collocating Customers.

ARTICLE VIII STATE OVERSIGHT AND COORDINATION

Section 8.1 State Oversight and Coordination

(a) State shall have the right to provide Oversight to Company and S&W directly through employees or indirectly through consultants.

(b) Within a reasonable period of time after the Agreement Date, MnDOT and DOA shall appoint a State Project Manager. MnDOT and DOA shall promptly notify Company and S&W of the identity of the State Project Manager and any replacement of the State Project Manager from time to time. The State Project Manager so appointed or any replacement State Project Manager shall have the authority to manage and administer this Agreement, to coordinate all activities of MnDOT and DOA relating to State's performance of this Agreement and to communicate to Company and S&W all decisions under this Agreement by or on behalf of MnDOT, DOA and the State. All such decisions communicated in writing by the State Project Manager shall be binding on State, MnDOT and DOA. State may eliminate the position of State Project Manager upon Acceptance of the entire Phase 1 or upon any earlier termination of this Agreement.

Section 8.2 Payment for Certain State Services.

(a) State shall have the right to charge Company and S&W for State's performance of Oversight under Section 8.1 only to the extent described in Section 4.3(b)(iv) or (with respect to Company only) in subsection (b) below. Without limiting the foregoing, and except as provided otherwise in Section 4.3(b)(iv), State shall solely bear the costs and expenses of the State Project Manager. The right of State to charge S&W for costs of Oversight and accommodation shall cease as to any such costs incurred after the last Acceptance Date for Phase 1.

(b) At all times after the Acceptance Date for any Construction Segment, MnDOT shall have the right to charge Company for incremental costs (i.e. the same type of extra costs as described in the definition of Incremental Costs) MnDOT reasonably incurs in accommodating the Network during maintenance operations and construction projects on State Trunk Highways within such Construction Segment. Such incremental costs of accommodation include but are not limited to the following:

(i) incremental design costs attributable to Network occupancy of Right of Way, such as:

(A) data collection; and

(B) determination of the different phases of the MnDOT construction project;